



## **An attorney discusses gearing up for major construction: Part 1**

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Most people living in a co-op or condominium building have no reason to have had experience with major construction projects. They may have skills that can be very helpful for a board, such as financial acumen, but not construction experience. Sometimes there is actually a contractor, engineer or architect on the board. One of the questions I am most frequently asked by boards is "What should we do first?" I am going to discuss that in this article, as well as what comes second and third. This article will discuss some of the planning. Part II will discuss the execution of the work. I would say that the very first thing a co-op or condominium board should do is reach out to their managing agent, if they have one, to start the process of contacting architects and engineers about the work they "think" they will need to have done. I say "think" because the building may have some general idea of what needs to be done, because there have been leaks from the roof or deterioration of the parapets, but really a survey will need to be done by a professional to give a true picture of the necessary work. This report is not only critical for purposes of assessing the scope of work, but it forms a "foundation" for all the other things that will follow. In other words, if the foundation is solid, the other areas will be solid. If the foundation is shaky and the report is not detailed or thorough enough, everything else will be "off."

When boards that have not worked with me come to me for advice towards the end of a project and tell me that their costs have doubled from the original budget contemplated, I always ask to see the initial report. While there may be unforeseen deterioration hidden in the walls, there may also not have been a thorough enough survey and assessment of the expenses so that the board could "plan" properly for the cost of the project. We try as a team to anticipate as many variables as possible, so that there are fewer surprises down the road.

This is also a good time for the board to establish a budget for what they feel they can afford to spend, as opposed to what they will need to spend to get the work done. If the project is large, such as pointing the facade and roof and parapet replacement, there will almost certainly need to be some refinancing of the mortgage, which takes some time to organize and close on. The work might even have to be done in phases to cover the expense. There might also need to be an assessment to build up a cash reserve. Landmark buildings can be especially expensive to renovate.

Many buildings retain engineers and architects, without having an attorney familiar with construction law, review the agreement. When I review these agreements, I always see items that can be better negotiated so that there is less likelihood of fee disputes with the design professional down the road and a better outcome with the work. One common problem is when a building plans to spend a lot on the renovation, but tries to save money on the design professional. They have them design and draw up the plans, then try to cut back on the time they spend observing the work during construction.

The end result of such short-sighted planning is that when problems occur, the building has no one to blame but themselves. The building should want and need the services of design professionals to advise them on the progress and quality of the work. These are topics I spend a lot of time discussing with my clients in the early stages.

C. Jaye Berger, Esq. is a co-op attorney at the Law Offices C. Jaye Berger, New York, N.Y.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540